

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GEORGE FORD,

Plaintiff,

v.

Case No. 2:06-cv-285
HON. GORDON J. QUIST

MARK POKLEY,

Defendant.

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**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on January 11, 2007. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In particular, plaintiff failed to establish a protected liberty interest in being free from second hand smoke. *Gorman v. Moody*, 710 F. Supp. 1256 (1989). The Sixth Circuit has concluded that a plaintiff cannot raise a claim for relief under the Fourteenth Amendment based on exposure to second hand smoke. *See Nwaebo v. Hawk-Sawyer*, 100 F. App'x 367, 369 (6th Cir. 2004) (prisoner's "complaint failed to state a claim under which relief may be granted under the Fourteenth Amendment because he has no protected liberty interest in a smoke free prison"); *Bowen v. Taft*, 62 F. App'x 117, 118-19 (6th Cir. 2003) (plaintiff "had no liberty interest in a smoke-free environment"); *see also Henderson v. Sheahan*, 196 F.3d 839 (7th Cir. 1999). For the reasons stated

in the Report and Recommendation, plaintiff has failed to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c).

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #3) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that the Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. §§ 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

Dated: April 5, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE